

Taupō District Council

Recommendations of the Independent Hearings Panel

Recommendation Report 4

Plan Change 41: Removal of Fault Lines

12 March 2024

This report should be read in conjunction with the **Index Report** and **Recommendation Report 2: Strategic Directions**

The **Index Report** contains an explanation of how the recommendations in all subsequent reports have been developed and presented, along with a glossary of terms used throughout the reports and a record of all Panel Minutes. It does not contain any recommendations per se.

Recommendation Report 4 contains the Panel's recommendations on Plan Change 41.

This Recommendation Report contains the following appendices:

Appendix 1: 42a Summary table of recommendations on each submission point

Appendix 2: Recommended changes to the Operative District Plan - Plan Change 41 provision wording and relevant planning maps - Accepted

The Hearings Panel for the purposes of hearing submissions and further submissions on all the Proposed Plan Changes comprised Commissioner David McMahon (Chair), Commissioner Elizabeth Burge and Councillor Yvonne Westerman.

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Recommendation Report 4

Plan Change 41: Removal of Fault Lines

1 Introduction

Report Purpose

- 1.1 This is Report 4, it is one of six Recommendation Reports in addition to an overarching Index Report prepared by the Hearings Panel appointed to hear and make recommendations on submissions to 'Bundle One'¹ incorporating six Plan Changes to the Taupō District Plan (TDP). The full background to Bundle One Plan Changes is provided in the Index Report.²
- 1.2 This report considers the provisions and records our recommendations relating to Plan Change 41: Removal of Fault Lines (**PC41**) which seeks to remove the fault lines from the planning maps and remove references to the Fault Line Hazard Area from the District Plan Provisions.
- 1.3 This report is the 4th report in relation to Plan Change 'Bundle One' encompassing the following Plan Changes:
 - Plan Change 38: Strategic Directions (the subject of **Recommendation Report 2**)
 - Plan Change 39: Residential Building Coverage (**Recommendation Report 1**)
 - Plan Change 40: Taupō Town Centre (**Recommendation Report 3**)
 - Plan Change 42: General Rural and Rural Lifestyle Environments (**Recommendation Report 5**)
 - Plan Change 43: Taupō Industrial Land (**Recommendation Report 6**)
- 1.4 The full background to the Bundle One Plan Changes is provided in an overarching **Index Report**. The purpose of this report on PC41 and the reports relating to each of the other five Plan Changes included in 'Bundle One' is to satisfy the Council's various decision-making obligations and associated reporting requirements under the RMA.
- 1.5 We will canvass the Plan Change background in due course. It has been the subject of a s32³ report⁴, consultation with stakeholders, and, of course, the public notification and culminating in our decision.
- 1.6 Before setting out the details of the Plan Change, the submissions to it and our substantive evaluation, there are some procedural matters that we will address, beginning with our role as a Hearing Panel.

Role and report outline

- 1.7 We were appointed as Hearings Panel members by Council on 27 April 2023. Our delegation included all necessary powers under the RMA to hear the submissions made on the 'Bundle One' Plan Changes and to make recommendations to the Council on the provisions contained within each of the six Plan Changes on all matters raised in those submissions to each relevant Plan Change.

¹PC39-43

² Index Report, dated May 2024

³ Section 32 of the RMA sets out the requirements for preparing reports that evaluate the appropriateness of a plan change.

⁴ *Plan Change 41 Section 32 Evaluation Report – undated*

- 1.8 Our role is to make a recommendation about the outcome of the Plan Change on the Council's behalf. The authority delegated to us by the Council includes all necessary powers under the RMA to hear and recommend on the submissions received on the Plan Change.
- 1.9 As mentioned, the specific purpose of this report and the subsequent reports relating to each of the six Plan Changes included in 'Bundle One' is to satisfy the Council's various decision-making obligations and associated reporting requirements under the RMA.
- 1.10 We have structured our discussion on this topic as follows:
- a. **Section 2-** sets out the background, factual information on the plan change process and other procedural matters.
 - b. **Sections 3** – summarises key contextual matters, relevant provisions and key issues/themes in submissions, and regulatory updates;
 - c. **Section 4** – contains our evaluation of key issues and recommended amendments to provisions and mapping;
 - d. **Section 5** - Statutory Evaluation; and
 - e. **Section 6-** Contains our conclusion
- 1.11 This Recommendation Report contains the following appendices:
- a. **Appendix 1: 42a Summary table of recommendations on each submission point.**
This is the Council's s42A Report table containing recommendations on each submission, commonly referred to as the accept/reject table. The Council, upon receipt of the Panel's recommendations, has decided not to update the s42A table to reflect the Panel's recommendation/Council's decisions.

Instead, the Council records that the Panel has accepted all those recommendations in the s42A Report table except as otherwise identified in this decision and as noted in Appendix 2 (recommended provisions) to this decision. It should be noted that there were also changes in recommendations following the s42A Report and through the hearing process. These recommendations and the associated changes are outlined within the s42A Reply Statement and ultimately culminated in Appendix 2 in the recommended provisions.
 - b. **Appendix 2: Recommended amendments to the Operative District Plan provision wording and planning maps - Accepted.** This accepts all the changes to the provision wording from the notified version of the PC41 as shown in Appendix 2 and includes consequential renumbering of provisions to take account of those provisions that have been deleted as a result of PC41.
- 1.12 The requirements in clause 10 of the First Schedule of the Act and s32AA are relevant to our considerations of the submissions to PC41 recommendation for deletion of the provisions and mapping of Fault Lines. These requirements are outlined in full in the **Index Report**. In summary, these provisions require among other things:
- a. our evaluation to be focused on changes to the proposed deletion of provisions and mapping arising since the notification of PC41 and its s32 reports;
 - b. the provisions and mapping to be examined as to whether they are the most

appropriate way to achieve the objectives;

c. as part of that examination, that:

- i. reasonable alternatives within the scope afforded by submissions on the provisions and corresponding evidence are considered;
- ii. the efficiency and effectiveness of the provisions is assessed;
- iii. the reasons for our recommendations are summarised; and
- iv. our report contains a level of detail commensurate with the scale and significance of the changes recommended.

1.13 We have not produced a separate evaluation report under s32AA. Where we have adopted the recommendations of Council's s42A report authors, we have also adopted their reasoning, unless expressly stated otherwise. This includes the s32AA evaluations attached to the relevant s42A Reports and/or Right of Reply Reports. Those reports are part of the public record and are available on the Council's website. Where our recommendation differs from the s42A authors' recommendations, we have incorporated our s32AA evaluation into the body of our report as part of our reasons for recommended amendments, as opposed to including this in a separate table or appendix.

1.14 A fuller discussion of our approach in this respect is set out in the **Index Report**.

Comments on the parties' assistance to us

1.15 In advance of setting out the Plan Change context, we would like to record our appreciation at the manner in which the proceedings were conducted by all the parties taking part.

1.16 The further information provided to us through Panel minutes assisted us in assessing and determining the issues, and in delivering our recommended decision.

1.17 With these initial thoughts recorded, we now set out the factual background to the Plan Change.

2 Background To the Plan Change

Plan change purpose

- 2.1 As notified, proposed Plan Change 41 (**PC41**) to the Taupō District Plan seeks to remove the fault lines from the planning maps and remove references to the Fault Line Hazard Area from the District Plan provisions.
- 2.2 It is pivotal to premise the rationale for PC41 to set the scene which has been the key to our evaluation and was the basis for the Panel's further questions through **Minutes 7⁵** and **23⁶**, which are set out in more detail **below**. The following paragraphs give a brief overview of the s32 evaluation, which considered the following three options:
- a. **Option 1:** Status quo
 - b. **Option 2:** Replacement fault line on the planning maps with GNS data
 - c. **Option 3:** Removal of the fault lines from the District Plan maps
- 2.3 The s32 evaluation concluded that Option 3 was the most appropriate option for the following reasons:
- *"Is a streamlined and simple plan change*
 - *Simplifies District Plan maps*
 - *Removes inaccuracies from the planning maps*
 - *Removes constraints to development for sites that have an out-of-date fault line currently mapped*
 - *Decreases costs for landowners with out of date fault lines to prove there is no fault line present*
 - *The amendments rely on existing subdivision provisions in the District Plan and the building consent processes to ensure fault lines are considered at appropriate stages of development*
 - *Achieves Part 2 of the Act, in that it is enabling people and communities to provide for their social, economic, and cultural well-being and for their health and safety."*
- 2.4 We return to these reasons later in our decision in respect to our evaluation of the three options.

Notification and submissions

- 2.5 The Plan Change was publicly notified on 14 October 2022. The closing date for submissions was 9 December 2022.
- 2.6 A total of 11 submissions were received by the Council with a total of 15 submission points.⁸ Ten submissions points opposed or sought amendments and five supported the plan change.
- 2.7 **Table 1** below provides a list of submitters to the proposed Plan Change, together with their broad positions. We provide a full summary of the submissions received in Table 1, including our decisions on the relief sought by each submitter in Appendix 1.

⁵ Minute 7, dated 1 August 2023

⁶ Minute 23, dated 12 November 2023

⁷ S32 Assessment: Plan Change 41, page 16, undated.

<https://www.taupodc.govt.nz/repository/libraries/id:25026fn3317q9slqvgym/hierarchy/Council/Consultation/District%20Plan%20Changes%2038-43/Removal%20of%20Fault%20Lines/S32/Plan%20Change%2041%20Section%2032%20Evaluation%20Report.pdf>

⁸ S42A Report, PC42, prepared by Rowan Sapsford, para 30, page 7, dated 29 Jun2 2023

Submissions				
Submission number/points	Submitter	Position	Further submission	Position
OS16.1	Toka Tū Ake EQC	Oppose	FS220.16 - Federated Farmers of New Zealand	Support
			FS211.14 - Mercury NZ Limited	Oppose
OS16.2	Toka Tū Ake EQC	Oppose	FS212.2 Waikato Regional Council	Support in Part
			FS220.17 Federated Farmers of New Zealand	Support
OS17.6	Jennifer Molloy Hargraves	Support	N/A	
OS24.2	Classic Builders Lakes District	Support	N/A	
OS29.24 & 30	Waikato Regional Council	Amendment sought	N/A	
OS31.1 & 9	Alistair Wilton	Support	N/A	
OS69.1	Lyndon Haugh	Amendment sought	N/A	
OS79.7	Cheal Consultants	Amendment sought	FS220.18 Federated Farmers of New Zealand	Support
OS91.8	Federated Farmers of New Zealand – Rotorua / Taupō	Amendment sought		
OS91.8	Contact Energy Limited	Support	FS209.153 Manawa Energy	Support
			FS211.16 Mercury NZ Limited S	Support
OS115.18, 24 & 30	Te Kotahitanga o Ngāti Tuwharetoa	Amendment sought	N/A	

Table 1: List of submitters to the Plan Change 41

2.8 A summary of submissions was prepared and subsequently notified for further submissions on 17 March 2023 with the closing date for receiving further submissions being 7 April 2023. Seven further submissions were received.

2.9 We discuss these issues (and the submissions underpinning them) in greater detail under our key issue evaluation in **Sections 3** and 4 of this report below.

Panel directions and procedures

2.10 The Panel issued a minute (**Minute 1**)⁹ to the parties to address various administrative and substantive matters in relation procedural matters for all six plan changes. This minute, and the others we issued through the course of the hearing and deliberations processes are available on Council's plan change website.¹⁰

2.11 Some minutes were in relation to all six plan changes of Bundle One and others related specifically to PC41. The following two minutes were specifically relevant to PC41.

a. Minute 7 (01.08.2023) – this covered:

- i. Confirmation that Panel will decide the outcomes of PC39 and PC41 'on the papers' and that a hearing will not be held
- ii. Set out matters that the Panel sought a response from the s42A author in relation to:
 - Confirmation of the Panels' understanding and representation of Council's approach to fault hazard planning in relation to structure

⁹ Minute 1 issued 15 June 2023

¹⁰ <https://www.taupodc.govt.nz/council/consultation/taupo-district-plan-changes-38-43>

- planning, subdivision and built development
- The quantum of developments that fall in the 'gap' between the District Plan provisions and the Building Act
- Clarification of the policy direction for guiding decisions on subdivision and development

b. Minute 23 (12.11.2023) – this covered:

- i. Further assessment of Options 1 and 2 in terms of the magnitude of mapping inaccuracies
- ii. Administrative implications of Options 1 and 3
- iii. Whether the adoption of Option 1 or 3 would preclude progressing Option 2 in the short to medium term
- iv. Council's appetite and or plans for progressing Option 2 as a medium to long term solution

2.12 The Council's website contains copies of all of the Panel's minutes on the six plan changes.

2.13 Responses were received to **Minute 7** and **Minute 23** on 6 October 2023 and 23 November 2023 respectively.

2.14 There were no site visits undertaken as the Panel did not deem this necessary.

Decision not to hold a hearing

2.15 A hearing for PC41 was originally scheduled for Friday 28 July 2023. Although there were eleven original submitters, of which some of these submitters requested to be heard at the hearing at the time of lodging their submission, the Council liaised with these submitters, to confirm whether their request to present to the hearing was still required. Furthermore, with the release of the Section 42A report it enabled submitters to see how their submissions had been addressed.

2.16 As a result, all the submitters consequently confirmed they were happy to forgo their actual attendance at a hearing, however, all submitters were given the opportunity to table a written statement in support of their submission. Two submitters¹¹ provided a statement for the Panel's consideration.

2.17 EQC's statement concluded that:

"I am writing to confirm that Toka Tū Ake EQC are satisfied with the explanation of how the changed plan will prevent development on land at risk from fault rupture and no longer wish to oppose the plan change."¹²

2.18 Waikato Regional Council's response similarly concluded that:

"The Regional Council agree with the approach and the reasoning detailed in the Taupō District Council response and the subsequent EQC response and would now like to remove their opposition to Plan Change 41."¹³

2.19 On this basis, the Panel confirmed that the outcome of PC41 would therefore be decided 'on the papers' in **Minute 4**.¹⁴ Final deliberations were conducted on 23 January 2024.

¹¹ EQC and Waikato Regional Council

¹² EQC Response, dated 13 July 2023

¹³ Waikato Regional Council response, dated 5 June 2023

¹⁴ Minute 4, dated 20 July 2023

3 Issues raised by Plan Change and submissions

Outline of matters addressed in this section

3.1 In this section we provide relevant context around which our evaluation is based, including:

- a. summary of relevant provisions;
- b. themes raised in submissions;
- c. identification of key issues for our subsequent evaluation; and
- d. summary of key legislative changes since notification of the PC41.

Summary of relevant provisions

3.2 As indicated in paragraph 1.2 of this Recommendation Report, the relevant provisions we address relate to PC41: Removal of Fault Lines. The s42A report set out that an assessment of the fault lines within the Taupō District undertaken in 2020 by the Institute of Geological and Nuclear Sciences Limited (GNS)¹⁵ identified that fault hazard areas have changed from those currently identified in the TDP. The report also identified new classifications, mapped hazard areas, changes to fault alignments, the removal of some existing faults and the identification of some new fault lines.¹⁶

3.3 The s42A report stated that *"Importantly, the GNS 2020 Report identified that the fault lines currently contained on the TDP planning maps are outdated and should be removed"*¹⁷ However, on review of the list of Recommendations contained in the GNS report, as a Panel we found that this was not apparent and the first GNS recommendation states:

*"Replace any active fault datasets currently held and being used by Taupo District council with those from this study".*¹⁸

3.4 The GNS Report does acknowledge that there are several faults that they have removed from their mapping as *"there is no evidence of them"*¹⁹ however, it does not explicitly state that fault lines should be removed in their entirety. We return to this conundrum later in this report.

3.5 In the meantime, we record that PC41 seeks to remove the following from the TDP:

- Section 3q: Mapara Valley Structure Plan Area: Policy 3q.2.3 vii
- Section 4e District Wide Rules: Rule 4e.10.1 and associated assessment criteria
- Planning Maps: Currently mapped fault lines including associated legend descriptions.

¹⁵GNS Report – Active fault hazards in the Taupo District, dated August 2020

¹⁶S42A Report, PC42, prepared by Rowan Sapsford, para 14, page 4, dated 29 Jun2 2023

¹⁷ S42A Report, PC42, prepared by Rowan Sapsford, para 14, page 4, dated 29 Jun2 2023

¹⁸ GNS Report – Active fault hazards in the Taupo District, dated August 2020, Section 6, page 69

¹⁹ GNS Report – Active fault hazards in the Taupo District, dated August 2020, Section 4.3, page 35

3.6 The relevant provisions in relation to **PC41** are as follows:

Chapter	PC41 provisions
Section 3q Marpara Valley Structure Plan Area	Policy 3q.2.3 vii. – delete
4e. District Wide Rules	<i>Section Index</i> 4e.10 – Fault Line Hazard Area – delete 4e.10.1 – Discretionary Rule - delete
Planning Maps	<i>Legend – Hazards</i> Fault Lines (District Plan) – delete <i>All Planning Maps</i> Remove the geographical information systems layer that depicts fault lines on the district plan maps.

3.7 The s42A report states that the purpose of removing the Fault Line Mapping and associated provisions set out in PC41 is to:

- a. remove outdated and inaccurate fault line data from TDP
- b. there is a range of statutory tools available to the Council under the RMA and the Building Act to suitably address the risk posed by the fault lines identified in GNS 2020 Report within the District; and
- c. managing the risk of fault lines from activities and development within TDC are more accurately controlled through the Building Act and Building Code and through existing TDP provisions for subdivision and large developments.

Themes raised in submissions

3.8 Without detracting from the finer detail provided in the submissions, the matters raised in those submissions to the Plan Change fall into one of more of the following categories, as set out in the s42A report:

- a. Retaining Mapped Fault Lines and associated Rules in the TDP
- b. Recognition of Regional and National Planning Documents
- c. Recognition of Te Kaupapa Kaitiaki and Te Tiriti²⁰

3.9 Submissions pertaining to 3.8a. above were the basis of our substantive evaluation and were the subject of our further inquiries through **Minute 7** and **Minute 23 Issue 1** below. Submissions pertaining to 3.8b. and 3.8c. are discussed in **Issue 2**.

²⁰ S42A Report, PC42, prepared by Rowan Sapsford, para 32, page 7, dated 29 Jun2 2023

Identification of key issues for our subsequent evaluation

- 3.10 We have organised the key issues that emerged from the submissions and our two substantive inquiries as set out above into the following categories which relate to our sections of the evaluation below.

- **Issue 1: Retention of mapped fault lines and associated rules in the District Plan?**

- **Issue 2: Other matters raised by submitters no longer in contention**

- 3.11 Some of these matters feature more prominently than others in our evaluation below, but we record that all submissions on the provisions relating to PC41 have been taken into account in our deliberations. In general, submissions in support of PC41 have not been discussed but are accepted or accepted in part. More detailed descriptions of the submissions and key issues can be found in Appendix 1 of the s42A report, which are available on the Council's website.

Summary of key legislative change since notification of PC41

- 3.12 Of relevance to Plan Change 41 is the Proposed National Policy Statement for Natural Hazards Decision-making which was released for consultation on 18 September 2023 (**NPS-NHD**).

- 3.13 Given that **NPS-NHD** was released as a draft during our deliberations, it does not have legal weighting but is still a relevant matter for our decision-making, in particular Section 3.3 "Best Information"²¹

(1) In giving effect to this National Policy Statement, decision-makers must use the best information available at the time, which means, if practicable, using complete and scientifically robust data.

(2) In the absence of complete and scientifically robust data, the best information may include information obtained from modelling, as well as partial data, local knowledge, and information obtained from other sources, but in this case decision-makers must: (a) prefer sources of information that provide the greatest level of certainty; and (b) take all practicable steps to reduce uncertainty (such as through monitoring or the validation of models used).

(3) A local authority:

(a) must not delay making decisions solely because of uncertainty about the quality or quantity of the information available; and

(b) if the information is uncertain, must interpret it in the way that will best give effect to this National Policy Statement.

- 3.14 PC41 would not adequately give effect to s3.3 (1) of the Proposed NPS-NHD given the Council has updated hazard mapping data but has chosen not to update the planning maps. However, given that the NPS-NHD is only a draft, we cannot place any weight on this matter during our evaluation of the options before us.

- 3.15 Irrespective of the current legal weighting of the NPS-NHD we sought Council's views on this matter during our deliberations and this is discussed further in Sections 4 and 5.

²¹ Proposed National Policy Statement for Natural Hazard Decision-making – consultation document, September 2023

4. Evaluation

Preamble

- 4.1 As set out above in paragraph **3.11** our evaluation is based on key issues raised by submitters and our subsequent inquiries to gain clarification on matters raised, rather than assessing each issue on a submitter-by-submitter basis. Our decision should be read in conjunction with the s42A report²² which addresses all the submissions and further submissions received on PC41.
- 4.2 Our evaluation and deliberations has been carried out 'on the papers' for reasons set out above in paragraph **2.15-2.19**.

Key issues outline

- 4.3 Submissions on PC41 were split in their views on whether to retain or remove the mapped fault lines and associated rules, with the EQC original submission²³ seeking retention of the maps in the District Plan but subsequently withdrawing their opposition.²⁴
- 4.4 Other submitters²⁵ sought some reference be retained within the District Plan to ensure plan users were aware of the fault lines presence. One submitter supported the removal of the mapped fault lines.²⁶
- 4.5 A key component of our evaluation has relied on two lines of inquiry in which we sought further clarification by means of an additional s32 evaluation from the Council's reporting officer (Mr Sapsford) . This was through **Minute 7** and **Minute 23**.
- 4.6 The split in submitters' views over whether the fault line mapping and associated provisions should be retained or removed raised our own concerns over which was the most efficient and effective mechanism to meet the purpose of the Act.
- 4.7 The following key issues were the focus of our deliberations:
- a. Issue 1:** Retention of mapping fault lines and associated rules in the District Plan
 - i. *What are the respective merits of Option 1 vs Option 3*
 - ii. *How subdivision and land use would be managed under PC41*
 - b. Issue 2:** Other matters raised by submitters no longer in contention
- 4.8 In order to assist us with these two issues, our first inquiry (set out in **Minute 7**), sought a greater understanding of, in the proposed absence of any fault line provisions in the District Plan (i.e. mapping and rules), what type and quantum of development could potentially fall through the gap between those activities that are controlled by the District Plan and those structures that need authorisation under the Building Act. In particular:
- a. For both subdivision and land use, but particularly land use, what policy direction is provided for guiding resource consents on land that may still be subject to actual fault hazards despite the removal of fault lines from the District Plan? and
 - b. In the absence of fault line provisions being in the District Plan (and particularly for land uses) what is the quantum of risk in terms of acting and not acting?

²² S42A Report, prepared by Rowan Sapsford, dated 3 July 2023

²³ OS16.1&2

²⁴ Letter from EQC to TDC, dated 13 July 2023

²⁵ OS79.7 and OS91.8

²⁶ OS069.1

- 4.9 The response to **Minute 7** by Mr Sapsford partially answered our concerns but there was ultimately still a gap in our understanding in relation to our fundamental s32 inquiry in that minute; namely around the efficiency and effectiveness, and quantum of risk associated with the potential adoption of PC41. The resultant gap produced a second line of inquiry by the Panel through **Minute 23**.
- 4.10 The response by Mr Sapsford to **Minute 23** produced a bespoke s32 evaluation regarding Options 1 and 2 as an alternative to Option 3, which provided us with sufficient information, for comparative purposes, to tease out the merits of acting verses not acting.
- 4.11 We evaluate Options 1 and 2 against Option 3 in further detail in **Issue 1** below.

Inventory of information used by the Panel during deliberations

- 4.12 The Panel was provided with the following information which we utilised to inform our recommendations:
- Section 32 Report
 - GNS Report 2020
 - Ministry for the Environment Guidance "*Planning for development of land on or close to active faults*" 2003
 - Submissions and further submissions
 - Submitter evidence
 - Section 42A Report and Council evidence
 - Council response to Panel Minute 7 and Panel Minute 23
 - Proposed National Policy Statement for Natural Hazard Decision-making 2023
- 4.13 The following evaluations of **Issues 1 and 2** outlined above make reference to these documents where we have specifically drawn on these in shaping our overall recommendations.

Issue 1: Retention of mapped fault lines and associated rules in the District Plan?

Overview

Scope of our decision-making mandate

- 4.14 Before we set out our evaluation on **Issue 1**, we wish to explicitly record for clarity the parameters of our decision-making mandate. Simply put, we can either approve or not approve, with or without amendments, what was notified as PC41. The scope for amendments is limited by the relief sought in submissions which can be either accepted in part or in full.
- 4.15 Significantly, we do not have the ability to recommend an alternative option put forward in the s32 evaluation, which was not publicly notified as this would have implications regarding fairness and natural justice. However, what is within scope is our assessment of all options against the merits of approving or not approving the Plan Change, being 'Option 3' in the s32 evaluation.
- 4.16 Therefore, we wish to explicitly record for clarity, that updating the District Plan with the updated GNS data maps (being Option 2 set out in the s32 evaluation) is **not in scope of our decision-making mandate**. It was however, a very important 'straw person' or 'devil's advocate' option against which we could consider the merits (or otherwise) of approving the plan change as notified (Option 3) or declining the Plan Change and retaining the status quo (Option 1).

Further assessment sought during deliberations

- 4.17 Upon completion of our initial deliberations as a Panel, we were not convinced that the s32 evaluation assessed that the method adopted by PC41 (i.e. Option 3 – removal of fault lines from the District Plan maps) is the most effective and efficient or the most appropriate mechanism to meet the purpose of the Act, the provisions of relevant higher order documents or the objectives and policies of the operative District Plan.
- 4.18 We needed to more fully understand the risk and have certainty regarding the s32 evaluation. As a result we asked for an updated and bespoke s32 evaluation that carefully compared Option 2 and Option 3 in terms of the s32 tests – particularly in terms of the efficiency and effectiveness arguments and the risks of acting and not acting (with particular regard to not including the new hazard area maps into the District Plan with attached policies and rules which could form part of Option 2).
- 4.19 Accordingly, and during our deliberations we sought clarification on our fundamental enquiry about the rationale and mechanics for/of this Plan Change through **Minute 7**.²⁷ Essentially **Minute 7** requested the following two levels of analysis:
- a. Fundamental analysis of:
 - i. The rationale for choosing Option 3 as notified for PC41; and
 - ii. The regulatory mechanics for managing fault hazard risk for subdivision and land use under PC41 and the resultant quantum of risk.
 - b. Context setting analysis of:
 - i. Comparison of approach with other Councils
 - ii. LiDAR fault identification work programme
 - iii. What are the provisions for earthquake risk management for subdivision in the operative plan
 - iv. The role Building Act plays in managing risk for buildings in close proximity to fault lines/areas
 - v. The role of the non-regulatory map layer
 - vi. The role of LIMs in the identification of fault hazards

Further assessment received during our deliberations

- 4.20 Mr Sapsford responded²⁸ to **Minute 7**, which usefully confirmed the Panel's assumptions on how PC41 approach and key issues that would embody.
- 4.21 Mr Sapsford response provided the following answers to the 'context setting' analysis:
- a. *"The approach taken by Taupō District Council is not a common approach when compared to the more contemporary district plans in the wider country.*
 - b. *TDC has no plans at present, to contract GNS to develop fault mapping of rural areas using the new LiDAR data.*
 - c. *Within the Rural Environment, under the Operative District Plan, subdivision creating lots smaller than 10ha would be a discretionary activity. For discretionary and non-complying activities, S106 (1) (a) still applies and the policies in Section 3L, Natural Hazards, are also applied. [Objective 3L2.1 and Policies i & ii)*
 - d. *For one off consents for single complying buildings, reliance on the Building Act process, is the primary and potentially only mechanism that is applied. I say potentially as any prior subdivision process associated with the allotment may have required consideration of the fault risk under S106 (1) (a) or TDP policy. For more complex land use consents that have Discretionary or Non-Complying*

²⁷Minute 7, dated 1 August 2023

²⁸ Response to Minute 7, prepared by Mr Sapsford, dated 6 October 2023
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activity status, the resource consent process, (i.e. s104) enables consideration of the Objectives and Policies in 3L of the TDP. These provisions are set out in my response to Question 3 and allow TDC to consider the risk posed by hazards and act accordingly.

- e. This is information which is shown on the TDC online District Plan mapping system, which is not associated with a rule in the District Plan.*
- f. It is my view that hazard information that is not contained in the District Plan is not required to be contained within a LIM, however it is not precluded from being so. So councils are able to include district plan hazard information in LIM's if they choose²⁹*

4.22 The above responses were helpful to the Panel for contextual purposes, but Mr Sapsford did not provide an answer to our fundamental questions, which left a gap in our understanding regarding the s32 evaluation.

4.23 This resulted in the Panel issuing a second line of inquiry through **Minute 23**³⁰, which sought a forensic assessment of Options 1 and 2 against Option 3 for s32 evaluation purposes.

4.24 **Minute 23** sought the following:

- a. Provide a 'forensic' assessment of Option 1 and 2 in terms of:*
 - i. For Option 1; outline the scale and magnitude of the existing fault line mapping Inaccuracies; and*
 - ii. Mapped and dimensioned examples of typical inaccuracies of fault lines of Option 1 compared with Option 2 mapping.*
- b. Identify what the 'pros and cons' of Options 1 and 2 in the manner of a s32 evaluation. When identifying these consider matters such as what the inaccuracies are and how fatal are they?*
- b. Identify what the 'pros and cons' of Options 1 and 2 in the manner of a s32 evaluation. When identifying these consider matters such as what the inaccuracies are and how fatal are they?"*

4.25 On the basis of the answers provided to Minute 7 detailed above, **Minute 23** also sought answers to the following questions:

- a. If either Option 1 or Option 3 were adopted as part of our recommended decision as an 'interim measure', what would be the implications on administration of the regime under each regime (particularly for Option 1; and*
- b. Would the adoption of either option (i.e. Option 1 or Option 3) as part of our recommended decision preclude Option 2 being implemented in the short to medium term (again though a First Schedule process)?*
- c. What is the Council's appetite and /or plans for progressing Option 2 as a medium to long term solution in light of the content of the draft NPS Natural Hazards which promotes a precautionary approach toward hazard planning.³¹*

4.26 Mr Sapsford provided a fulsome response to the above questions and distilled the following matters for the Panel:

- a. Overall, the GNS data [Option 2] is more extensive (i.e. there are more faults in more locations) and reliable than the operative fault information [Option 1].³²*

²⁹ Response to Minute 7, prepared by Mr Sapsford, dated 6 October 2023

³⁰ Minute 23, dated 12 November 2023

³¹ Minute 23, dated 12 November 2023

³² Response to Minute 23, prepared by Mr Sapsford, page 24, dated 23 November 2023.
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- b. As well as showing faults in the wrong location, the operative fault information also shows inactive faults. The orange square in Figure 1 below illustrates a large area of inactive faults that are currently mapping in the ODP.
- c. The Option 2 data better reflects the extent of the faulting hazard within the Taupō District.... Option 1 requires resource consents in locations where the fault or hazard no longer exists, and therefore is totally unreliable as a basis to trigger a consent.³³

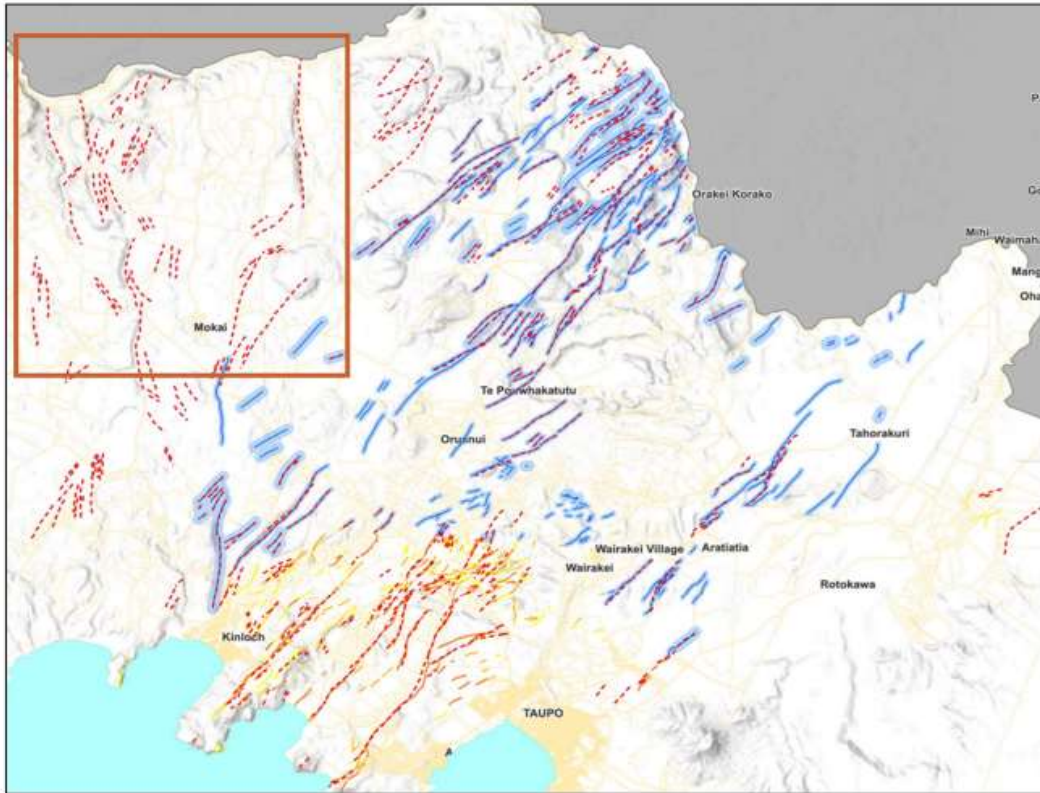


Figure 1: Operative (shown as red dotted Lines) and GNS Fault Data (shown as blue, orange and yellow lines) for the Northern Taupō District.³⁴

4.27 On the basis of the answers above, Mr Sapsford provided further analysis concluding that:

- a. Even though the data is known to be inaccurate and there may not be a fault present, a resource consent process could still be required to be initiated, under Option 1. The potentially unnecessary cost of this application would be unreasonably borne by the applicant.
- b. Adopting Option 1 or 3 would not preclude Option 2 being implemented in the short to medium term.³⁵
- c. On review of the current draft of the NPS-NH, TDC would be required to undertake a plan change [to implement a precautionary approach] as soon as reasonably practicable.³⁶

4.28 Overall, the combination of Mr Sapsford's response to **Minute 7** and **Minute 23**, provided us with sufficient clarity to inform our deliberations in order to carry out our deliberations and our recommendation.

³³ Response to Minute 23, prepared by Mr Sapsford, page 7, dated 23 November 2023

³⁴ Response to Minute 23, prepared by Mr Sapsford, Figure 1, page 3, dated 23 November 2023

³⁵ Response to Minute 23, prepared by Mr Sapsford, page 8, dated 23 November 2023

³⁶ Response to Minute 23, prepared by Mr Sapsford, page 9, dated 23 November 2023

- 4.29 With our fundamental information requirements now satisfied, we now set out our evaluation of the two crucial sub-issues of **Issue 1** as set out above being:
- a. *What are the respective merits of Option 1 vs Option 3*
 - b. *How subdivision and land use would be managed under PC41*
- 4.30 By answering the two sub-issues above, the proceeding evaluation provides us with the overarching answer to **Issue 1**, whether the fault line mapping and provisions should be retained or deleted, concluding in paragraph 4.56 below.

Evaluation and Recommendation

What are the merits of Option 1 vs Option 3

- 4.31 As set out earlier, our determination is limited to either to approve or not approve PC41, which in terms of the s32 evaluation is to either adopt with Option 1, being status quo and not approve PC41 or approve PC41, which is Option 3. In balancing these two options, we needed to fully understand how these two options measure up in terms of efficiency and effectiveness and the quantum of risk of acting and not acting against Option 2. Therefore, assessing Option 2 in a s32 sense was a useful 'straw person' comparator to tease out the merits of Options 1 and 3.
- 4.32 Mr Sapsford essentially provided a retrofitted s32 evaluation, comparing Options 1 and 2 against Option 3, which we have assimilated into a colour coded **Table 2** below. Table 2 depicts the following:

	Sub-optimal against Option 3
	Neutral against Option 3
	Optimal against Option 3

Compared against Option 3: PC41	Benefits and Costs of Effects (s32(2)(a))	Effectiveness and Efficiency (s32(1)(b)(ii))	Risk of acting or not acting if there is uncertain or insufficient information (s32(2)(c))
Option 1: Status Quo	The unreliability and inaccuracy of the Operative fault data means that there are significant costs to applicants under Option 1 when compared to Option 3.	Does not have a responsive policy framework which reflects the nature of the hazard data but this remains the same for Option 3.	Higher risk than Option 3 given the inaccuracy and unreliability of the operative fault information.
Option 2: Updating maps and provisions	There are fewer costs associated with Option 2 however given the ability of the newer information to be able to be considered in both options, the social and economic benefits from assessing and managing the risk posed by the hazard is similar.	More likely to achieve the objectives of the Plan and is the better option. This is primarily due to the accuracy of the Option 2 fault data. Neither option has a responsive policy framework which reflects the nature of the hazard data.	There is a higher risk associated with Option 1. While the GNS data means there is less risk associated with Option 2, there would be a risk associated with how this information is expressed through the rule framework.

Table 2: Summary of s32 Evaluation of Options 1 and 2 when compared to Option 3.

- 4.33 As the table above shows, on the face of it Option 2 seems to achieve the s32 tests more readily when compared with what PC41 proposes but this option was not pursued, despite appearing to be the 'optimal option'. This is in spite of being more effective in dealing with land use and development on land subject to the revised fault hazard areas.
- 4.34 What is importantly depicted by **Table 2** above, is that Option 1 is clearly sub-optimal to Option 3. This is on the basis of the erroneous nature of the existing mapping in the District Plan, which ultimately results in unnecessary consenting requirements. This would impose unnecessary financial costs to the applicant and are an inefficient use of Council and landowner resources.
- 4.35 However, we need to reiterate the parameters of our decision-making powers as set out in paragraphs 4.14 - 4.16 above; namely, that despite Option 2 appearing to achieve the purpose of the Act better than Option 1, in not adopting the Plan Change (Option 3) Option 1 would remain and as the above table demonstrates that this is clearly not appropriate in a s32 sense.
- 4.36 **Table 2** above has distilled our key consideration that our evaluation hinges on the risks of acting vs not acting between Options 1 and 3, which we set out below.

How would subdivision and land use managed under PC41?

- 4.37 In testing whether Option 3 is the most appropriate option in a s32 sense, we then turned our mind to the second key question of 'what are the risks of acting vs not acting' in relation to both subdivision and land use if such was to occur in areas that are currently subject to fault lines but would not be under PC41.
- 4.38 We now set out our evaluation of the following two activities below:
- *Subdivision*
 - *Land use*

Subdivision

- 4.39 In respect to subdivision, Mr Sapsford's response³⁷ set out clearly that the mechanisms available to Council when processing subdivision applications which would capture land that is subject to fault hazard under PC41(Option 3):
- s106(1)(a) – consent authority may reuse or grant consent subject to conditions if there is a significant risk from natural hazards.
 - s6(h)³⁸ – matters of national importance with respect to natural hazards.
 - the entry activity status is controlled and there are there are matters of discretion in relation to natural hazards for both controlled and restricted discretionary activities.
 - Where a subdivision is deemed a discretionary or non-complying activity under the District Plan, fault hazard risk would be captured as any matter can be considered 'on the table' for assessment and therefore the Council can exercise their powers to ensure that a proposed subdivision mitigates/avoids the effects of fault hazards
 - There is also objective³⁹ and policy⁴⁰ direction contained within the ODP which seeks to protect effects from natural hazards.
- 4.40 On that basis, the above mechanisms demonstrates that Council has the ability to either approve a subdivision application with conditions or decline it. This provides us with some

³⁷ Response to Minute 23 from Rowan Sapsford, dated 23 November 2023

³⁸ RMA, Section 6 (h) matters of national importance – Natural Hazards

³⁹ Objective 3L.2.1

⁴⁰ Policies 3L2.1 i. and ii.

confidence that despite removing the fault hazard maps and associated provisions (adopting Option 3 as notified by PC41), the fault hazard would still be adequately addressed and therefore the risk of acting and not acting are potentially equal under Options 1 and 3. In other words for subdivision at least the risks are no greater under option 3 than the status quo of Option 1.

Land use

- 4.41 The management of land use development has been our key matter of concern throughout this entire process. For Option 3 we were concerned that there was a sole reliance on the Building Act to address hazards associated with fault lines which in turn meant that many activities could be authorised as a permitted activity or with a low level resource consent (i.e. controlled or restricted discretionary) even though they might be in an area subject to a fault line. This was highlighted by Council in the original s32 evaluation from Mr Smith where he acknowledged that:

*"The TDP is a reasonably permissible district plan, for development in rural areas. It is reasonable to expect a range of development including industrial development, such as a milk processing plant, or a power plant, or facilities using second hand geothermal heat, next to a power plant in the rural area. Given that the Taupō District is also a tourist destination, and there is potential for accommodation or lodges in the rural environment where there might be fault hazards."*⁴¹

- 4.42 We pointed the above out in **Minute 7** and requested Mr Sapsford to address the risk associated with an absence of land use controls associated with fault lines and a sole reliance on the Building Act.⁴² This would result in a situation where land use consent is not required (or even where it is required for a reason other than a fault hazard matter) by the District Plan the Council is able to rely on the November 2021 amendment to the Building Act which enables Councils to refuse building consent on land subject to natural hazards (presumably using the maps that will sit outside the Plan showing areas affected by fault hazard areas).⁴³

- 4.43 However, Mr Sapsford's response to **Minute 7** referred back to Mr Smith's evidence where he stated that:

*"In the Rural Environment, where fault hazard areas are not mapped in detail TDC has the wide fault awareness areas. Geotech is required as standard practice to ensure a suitable building platform in these areas to meet the Building Act. The fault awareness areas identified in GNS 2020 will be noted in the project information memorandum (PIM). A Geotech assessment will be expected to identify if the building site is suitable given the potential for a fault to be in the area."*⁴⁴

- 4.44 Furthermore, Mr Sapsford reiterated *"For one off consents for single complying buildings, reliance on the Building Act process, is the primary and potentially only mechanism that is applied."*⁴⁵ but he did not comment on the risks of this approach.

- 4.45 Minute 23 therefore reiterated Panel's need for further understanding of this matter.

- 4.46 Mr Sapsford responded that with *"the presence of this new information [GNS data] and its ability to be considered in Building Act and other RMA processes means that there are*

⁴¹ Planning Evidence, prepared by Mr Adian Smith, para 13, page 2-3, dated 23 June 2023

⁴² Question 13.b Minute 7, dated 1 August 2023

⁴³ Question 13.c.iii., Minute 7, dated 1 August 2023

⁴⁴ Planning Evidence, prepared by Mr Adian Smith, para 16, page 3, dated 23 June 2023

⁴⁵ Response to Minute 7, para 4, page 3, dated 6 October 2023

*safeguards in place to ensure that the level of risk associated with new development is able to be assessed.*⁴⁶

- 4.47 Our key concern remained that there is little ability for Council to address the risk of fault hazard, where a land use development does not involve subdivision, other than what is managed through the Building Act. This could result in an authorisation being given per permitted or low level land use consent to only then be rejected under the Building Act. This raises the fundamental question of whether it is effective and appropriate to allow a land use to occur (either by permitted activity rule or land use consent) in a recognised hazard area only to potentially have the building consent for it declined at a later stage.
- 4.48 We posed several further questions in **Minute 23** to tease out the quantum of inaccuracies and the risk of acting and not acting between the three options, particularly where subdivision is not involved, seeking a response to the following:

*"Can you confirm that the Building Act / building consent process would be the sole mechanism for managing the risks associated with building in close proximity to the revised hazard area/fault lines. The term "primary" is used in the s32 evaluation under Option 3 on page 13. Primary potentially suggests more than one mechanism is available when in reality PC41 appears to be relying solely on the Building Act / building consent process"*⁴⁷

- 4.49 Mr Sapsford's response provide the following fs32 evaluation in terms of 'risk of acting or not acting' and set out the following conclusions in **Figure 1** below:

Risk of acting or not acting if there is uncertain or insufficient information (s32(2)(c))	
With the presence of newer and more accurate information (the GNS Data), there is a risk associated with acting, i.e. the adoption of Option 1. This risk is higher when considering the wider RMA processes and Building Act tools available that support the GNS Data being applied to new developments.	The risk of acting on this occasion is less than Option 1 due to the accuracy of the information available. There is still a degree of uncertainty associated with the information which has not been assessed by LIDAR. This uncertainty is however much less than Option 1. Option 2 does not however respond to this uncertainty in the proposed planning framework, instead it would adopt the existing operative policy and rule framework which does not reflect the nature of the fault data mapped. The risk of acting in this instance is that the rule framework in the TDP would not reflect the accuracy or type of hazard information meaning that FAZ and FAA would have the same activity status.

Figure 1: Response to Minute 23, s32 evaluation, Page 6.

- 4.50 Despite the conclusion in **Figure 1** above, what Mr Sapsford's additional s32 evaluation highlighted to us is that for both Options 1 and 3, they ultimately have the same sub-optimal outcome with respect to managing the risks of fault hazards where a development does not involve subdivision. What he rightly pointed out, is that the point of difference lies with the potential for unnecessary cost of an application that would arise under the Option 1 scenario and that the operative TDP rule framework would not reflect the updated mapping information. This would result in the requirement for an unnecessary application process and costs borne by the applicant from incorrect fault hazard data. Under Option 3, being the PC41 proposal, the need to consent and the associated costs would not occur and therefore in the Option 1 vs Option 3 contest in terms of costs Option 3 is the more optimal option.

⁴⁶ Response to Minute 23, prepared by Mr Sapsford, dated 23 November 2023

⁴⁷ Minute 23, Question 19.d, dated 12 November 2023

4.51 On balance, we ultimately agree with Mr Sapsford view that:

*"Option 1 requires resource consents in locations where the fault or hazard no longer exists, and therefore is totally unreliable as a basis to trigger a consent. So, the consent is unwarranted, and the associated costs are unreasonable. As can be seen on the attached maps this problem is widespread throughout the District. **I consider this to be a fatal element of Option 1. [emphasis added]** The key challenge with adopting Option 2 is the risks associated with the regulatory framework not reflecting the accuracy of the new data. This represents an inefficient response to the new information."*

4.52 Overall, when faced with all the evidence in front of us, it is clear that Option 2 has fewer costs, more benefits and is more efficient and effective when compared to Option 3. However, we reiterate again, choosing Option 2 is not within our remit. What the evidence does illustrate to us is that in the Option 1 vs Option 3 contest, Option 3 is the most appropriate in a s32 sense.

4.53 With this in mind, we posed the following question in **Minute 23** to ascertain the timeframes for Council to implement Option 2

"What is the Council's appetite and /or plans for progressing Option 2 as a medium to long term solution in light of the content of the draft NPS Natural Hazards which promotes a precautionary approach toward hazard planning."

4.54 Mr Sapsford response provided us with a level of comfort that progressing Option 2 would reduce the risks of acting vs not acting in the medium term by stating that:

"On review of the current draft of the NPS-NH, TDC would be required to undertake a plan change as soon as reasonably practicable. The NPS requires council to use the best information they have at the time which includes information which may be incomplete or not scientifically robust. The NPS does not refer to processes or tools under other legislation, such as the Building Act, so it is my view that it is requiring an approach which is reliant on a RMA focused response. This response would require TDC to initiate a First Schedule process that would likely involve adding the most up-to-date fault data into the Plan along with a relevant policy framework."⁴⁸

Recommendation

Issue 1: Retention of mapped fault lines and associated rules in the District Plan

4.55 Therefore, on balance we recommend that PC41, Option 3 be adopted and the mapped fault lines and associated rules in the District Plan be deleted.

4.56 However, our decision comes with a strong recommendation to Council, alluded to earlier that a priority for 'Bundle Two' changes should include a full provision and mapping update in relation to Natural Hazards which is aligned with the emerging Natural Hazard NPS and GNS's recommendation to replace any active fault datasets currently held and being used by Taupō District Council with those identified in their 2020 study and/or subsequent updated fault line mapping.⁴⁹

⁴⁸ Response to Minute 23, prepared by Mr Sapsford, page 9, dated 23 November 2023

⁴⁹ GNS Report – Active fault hazards in the Taupo District, dated August 2020, Section 6, page 69

Issue 2: Other matters raised by Submitters

Overview

4.57 Two key matters were raised by submitters in relation to:

- *Recognition of Regional and National Planning Documents*⁵⁰
- *Sub-issue 6b: Recognition of Te Kaupapa Kaitiaki and Te Tiriti*⁵¹

4.58 These matters were not in contention, and we accept and adopt Mr Sapsford's s42A evaluation on these submissions. However, for completeness, we briefly address each of these matters in turn below.

Evaluation and Recommendation

Recognition of Regional and National Planning Documents

4.59 Waikato Regional Council submission⁵² made reference more generally to the approach taken to rezoning of areas of Rural Lifestyle where there were potentially affected to natural hazards rather than specifically in relation to PC41. Overall, the submission sought to give regard to Change 1 to the Waikato Regional Policy Statement to align with the NPS-UD and should also be formatted to align with the format of the National Planning Standards.

4.60 Mr Sapsford's s42 report addressed the submission point in respect to the rezoning areas potentially affected by natural hazards by stating that:

*"the TDP contains a range of provisions that will enable the risk posed by fault lines to be considered in the event of proposed intensified urban development."*⁵³

4.61 With respect to the submission point seeking that the 'Bundle One' should align with the National Planning Standard format, we agree and accept Mr Sapsford response and rejection of this submission. Mr Sapsford stated that:

*"for the purposes of these Plan Changes there is not a mandatory requirement to amend provisions in accordance with the requirements of the National Planning Standards. To do so risks unintended consequences within the architecture of the TDP outside a more fulsome or complete review."*⁵⁴

4.62 As set out earlier, Waikato Regional Council provided a statement in lieu of attending a hearing which stated:

*"The Regional Council agree with the approach and the reasoning detailed in the Taupo District Council response and the subsequent EQC response and would now like to remove their opposition on to Plan Change 41."*⁵⁵

4.63 Overall, we consider that PC41 and all plan changes of Bundle One are not inconsistent with Regional and National Planning Documents. We address this further in **Section 5** for clarity.

⁵⁰ OS29.24 and OS29.30

⁵¹ OS115.18 and OS115.24

⁵² OS29

⁵³ S42A Report, prepared by Mr Sapsford, para 58, page 11, dated 29 June 2023

⁵⁴ S42A Report, prepared by Mr Sapsford, para 61, page 11, dated 29 June 2023

⁵⁵ Statement from Waikato Regional Council prepared by Mr Josh Rush of GMD consultants, dated 5 June 2023

*Recognition of Te Kaupapa Kaitiaki and Te Tiriti*⁵⁶

- 4.64 Te Kotahitanga o Ngāti Tuwharetoa⁵⁷ submission sought that all proposed plan changes of 'Bundle One'⁵⁸ recognise and provide for the vision, objectives, values, and desired outcomes in Te Kaupapa Kaitiaki and reflect a genuine understanding of the principles of Te Tiriti.
- 4.65 We accept and adopt Mr Sapsford's assessment and recommendation to accept this submission in part in which he stated:

*"The approach taken by TDC is a pragmatic one which considers the nature of the information available and the impact on landowners and the wider community. This included considering the impacts on those who may be living on the land affected by fault lines. This approach was discussed with iwi during the plan change development process with no specific feedback given. Given the nature and scope of PC41, I consider that Te Kaupapa Kaitiaki and the principles of Te Tiriti have been appropriately considered."*⁵⁹

Recommendation

Issue 2: Other matters raised by Submitters

- 4.66 For reasons set out above, we accept and adopt Mr Sapsford's assessment and associated recommendations to accept or reject the submissions. We consider that the matters raised in those submissions have been adequately addressed and supports our overall recommendation to adopt PC41 as set out above in paragraphs 4.55 - 56.

⁵⁶ OS115.18 and OS115.24

⁵⁷ OS115

⁵⁸ PC39-43

⁵⁹ S42A Report, prepared by Mr Sapsford, para 65, page 13, dated 29 June 2023

5. Statutory Considerations

Summary of statutory requirements

- 5.1 The statutory requirements for the preparation and consideration of the contents of a District Plan are set out in s31, 32, and 72-77D of the RMA.
- 5.2 In *Colonial Vineyard Ltd v Marlborough District Council*⁶⁰, the Environment Court updated the framework of matters to be evaluated when preparing a plan, albeit by reference to the version of the RMA that applied prior to 3 December 2013. The RMA has been amended a number of times since that date, the most relevant for our purposes being the substantial rewriting of s32 and the introduction of s32AA and the National Planning Standard. Other minor amendments to words and phrases have also been made.
- 5.3 In these circumstances we prefer to set out the statutory requirements that we consider apply specifically to the preparation and consideration of PC43, drawing on *Colonial Vineyard*, where it is appropriate to do so, but supplementing as necessary where amendments have been made.

Part 2 of the RMA

- 5.4 The Act's purpose and principles are set out in Part 2 of the Act.
- 5.5 Section 5 explains that the Act's purpose is to promote the sustainable management of natural and physical resources.
- 5.6 The Panel accepts and adopts the initial evaluation of Part 2 matters in the s32 which reflect the importance of Part 2 of the RMA specifically, Sections 5, 6 (h), Section 74, 75(3) and section 75(4) and Section 8.
- 5.7 Furthermore, there was no evidence before us to suggest that there are areas of invalidity, incomplete coverage or uncertainty in the Plans or intervening statutory documents such that any detailed evaluation of Part 2 is required.

Council's function and purpose of PC41

- 5.8 The Council has extensive functions under s31 of the RMA for the purpose of giving effect to the Act's sustainable management purpose, as follows:

(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

- (a) The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district (section 31(1)(a)).*
- (aa) The establishment, implementation, and review of objectives, policies and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district (section 31(1)(aa)).*
- (b) The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –*
 - (i) the avoidance or mitigation of natural hazards; and*
 - (ii) repealed*
 - (iia) the prevention or mitigation of any adverse effects of the development,*

⁶⁰ ENV-2012-CHC-108, [2014] NZEnvC 55

- subdivision, or use of contaminated land:*
- (iii) the maintenance of indigenous biodiversity:*
- (c) *Repealed*
- (d) *the control of the emission of noise and mitigation of the effects of noise:*
- (e) *the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes*
- (f) *any other functions specified in this Act (section 31(1)(b)).*

(2) The methods used to carry out any functions under subsection (1) may include the control of subdivision (section 31(2)).

- 5.9 In respect to the above, the purpose of PC41 seeks to remove the fault lines from the planning maps and remove references to the Fault Line Hazard Area from the District Plan provisions, which are incorrect and not fit for purpose. In this respect, PC41 is considered to be in accordance with s31(a) and (b) as managing development near fault lines is achieving integrated management of the effects of the use and development of the natural resources of the district and the control of any actual or potential effects of use or development.⁶¹

Relevant Policy Considerations

- 5.10 We have also given consideration to PC41 consistency with Section 75(1) of the RMA, which requires a District Plan to state the objectives for the District, any policies to implement the objectives, and the rules (if any) to implement the policies.
- 5.11 As discussed in our evaluation above, the Panel is cognisant in the absence of specific provisions in relation to Fault Lines, there was still adequate objective and policy direction to manage the risk from fault hazard; particularly for the subdivision of land.
- 5.12 We therefore accept and adopt Mr Sapsford's assessment of this matter provided in his response to **Minute 7** which sets out that PC41 is consistent with the ODP objectives and policies and "enables consideration of the Objectives and Policies in 3L of the TDP"⁶²

National Policy Statements

- 5.13 When Bundle One Plan Changes were notified on 14 October 2022, the following National Policy Statements (NPSs) were in force:
- NPS for Renewable Electricity Generation 2011;
 - New Zealand Coastal Policy Statement 2010;
 - NPS on Electricity Transmission 2008; and
 - NPS for Freshwater Management 2020;
 - NPS on Urban Development 2020
- 5.14 By virtue of s75(3) of the RMA, PC41 is required to give effect to the provisions of these documents, where relevant.
- 5.15 As set out above earlier, the draft **NPS-NHD** was released for consultation on 18 September 2023.
- 5.16 During our deliberations we sought further clarification on this matter in **Minute 23**, seeking a response to the following question with regard to the Proposed NPS-NHD:

"What is the Council's appetite and /or plans for progressing Option 2 as a medium to long term solution in light of the content of the draft NPS Natural Hazards which promotes

⁶¹ PC41, S32 Evaluation page 4, undated

⁶² Response to Minute 7, prepared by Mr Sapsford, page 3, dated 6 October 2023

*a precautionary approach toward hazard planning.*⁶³

5.17 Mr Sapsford's response on this matter stated that:

*"On review of the current draft of the NPS-NH, TDC would be required to undertake a plan change as soon as reasonably practicable. The NPS requires council to use the best information they have at the time which includes information which may be incomplete or not scientifically robust."*⁶⁴

5.18 We are satisfied that Council is abreast of the potential future requirements of NPS-NHD and that PC41 does not preclude the draft provisions being given effect to at the appropriate time.

The Regional Policy Statements

5.19 As with the NPS, the Regional Policy Statements (**RPS**) must be given effect to by PC41.

5.20 We acknowledge that there is a level of complexity in relation to these documents given that there are four relevant RPS's in relation to the six Plan Changes as follows:

- Waikato Regional Policy Statement
- Horizons Regional Policy Statement
- Bay of Plenty Regional Policy Statement
- Hawkes Bay Regional Policy Statement

5.21 No additional evidence was lodged in respect of the assessment of RPS's.

5.22 In the absence of any further evidence, we must accept the findings of the s32 report in relation to the relevant **RPS's** and the comprehensive assessment of the relevant objectives and policies of the four regional policy statements set out in Appendix 2 of s32 report.⁶⁵

National Environmental Standards

5.23 There are nine National Environmental Standards (**NESs**) currently in force:

- NES for Storing Tyres Outdoors 2021;
- NES for Freshwater 2020;
- NES for Marine Aquaculture 2020;
- NES for Plantation Forestry 2017;
- NES for Telecommunication Facilities 2016;
- NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011;
- NES for Electricity Transmission Activities 2009;
- NES for Sources of Human Drinking Water 2007; and
- NES for Air Quality 2004.

5.24 The s32 Evaluation did not canvas these but the Panel accepts that none of the above NES's are directly relevant, or inconsistent with PC41.

Other statutory considerations

5.25 The requirement under s74 of the RMA to give regard to matters when preparing a plan extends beyond those documents referred to above to include:

- National Planning Standards;

⁶³ Minute 23, dated 23 November 2023

⁶⁴ Response to Minute 23, prepared by Mr Sapsford, dated 23 November 2023

⁶⁵ PC41 s32 Evaluation, section 2.2, pages 4-5 – PC42,. Undated

- Management plans and strategies prepared under other Acts;
 - Relevant entries on the New Zealand Heritage List / Rārangī Kōrero;
 - The plans or proposed plans of adjacent territorial authorities; and
 - Iwi management plans.
 - Building Act
- 5.26 The Council has demonstrated its regard to these matters in preparing PC41 and the s42A Report of the RMA has specifically detailed relevant information relating to s74 matters, and the Panel has also had regard to the relevant matters to the extent relevant to our role.
- 5.27 The purpose of the first set of National Planning Standards that came into force in 2019 is to improve the efficiency and effectiveness of New Zealand's planning system by providing a nationally consistent structure, format, definitions, noise and vibration metrics and electronic functionality and accessibility for district and other RMA plans.
- 5.28 Within the Taupō District there are the following iwi management plans:
- Central North Island Forests Iwi Collective (CNI) He Mahere Pūtahitanga (2018)
 - Te Arawa River Iwi Trust (TARIT) Environmental Management Plan (2021)
 - Ngāti Tūwharetoa Environmental Iwi Management Plan (EIMP) (2003)
 - Ngāti Tahu - Ngāti Whaoa Iwi Environmental Management Plan (IEMP): Rising above the mist - Te aranga ake i te taimahatanga (2019)
 - Raukawa Environmental Management Plan: Te Rautaki Taiao a Raukawa (2015)
- 5.29 The s32 evaluation of PC41 sets out the analysis of how each of the Iwi Management Plans, Taupō District 2050 – Taupō's Growth Management Strategy, the Regional Plan and the Building Act have been taken into account and we accept and adopt that PC41 is consistent with the iwi management plans listed above.⁶⁶

Summary of Statutory Requirements

- 5.30 We accept and adopt the s32 and additional responses provided to the Panel's **Minutes 7 and 23**. However, our assessment was somewhat limited based on the evidence before us, particularly in relation to the relevant RPS's and NPS-NHD. Overall, we consider that whilst PC41 may not be fully consistent with the emerging policy framework of the relevant NPS's, RPS's, iwi management plans, the Building Act and the Resource Management Amendment Act, there was no evidence to signal to us that the risk of the acting would be greater than the risk of not acting.

Concluding comment

- 5.31 We said earlier in this report that we were facing a conundrum and that our recommendation was made with reluctance. The conundrum is principally that the optimal solution (Option 2) is not able to be pursued/implemented at this point in time leaving it a choice between two sub-optimal options (Option 1 and 3). The status quo (Option 1) is flawed and the Council preferred option (Option 3) which in our view inappropriately defers the control of hazard planning from the District Plan to the Building Act.
- 5.32 Neither option can be said to be efficient or effective and neither gives effect to the draft NPS.
- 5.33 In the end it came down to the choice of two sub-optimal options and the selection was based on the option that poses the least risk - that is Option 3 – the Council preferred option. Significantly, in reporting on that option, GNS did not explicitly state that fault lines should be removed from the District Plan in their entirety.

⁶⁶Plan Change 41: s32 Evaluation Report, PC38 Sections 4.8 and 4.9, undated

- 5.34 For Option 3, whilst there are some belts and braces in the District Plan for subdivision, from a land use perspective the reliance on the Building Act to manage hazards represents to us the ambulance at the bottom of the cliff; but at least it is there until the matter is hopefully addressed in 'Bundle 2' of the review of the District Plan.

6. Conclusion and recommended decision

- 6.1 For the reasons summarised above, we recommend the deletion of the Fault Lines from the planning maps and provisions as notified by PC41.
- 6.2 We would like to express that whilst we are recommending that Council adopts PC41 in full, this is by no means the most optimal outcome. However, as set out in paragraph 4.14 above our decision-making powers were limited, with the most optimal outcome being Option 2, but this option was not publicly notified and therefore beyond our scope to recommend.
- 6.3 However, we would strongly urge Council to progress Option 2 in full as a high priority in the next tranche of plan changes to ensure that it tracks towards the framework set out in Proposed National Policy Statement for Natural Hazard Decision-making.⁶⁷
- 6.4 In the absence of the ability to recommend an option that provides a fully optimal result, we find that PC41 is more efficient than not adopting PC41, particularly that adopting PC41 will:
- Reduce the number of resource consent requirements where the operative TDP identifies fault lines that are incorrect,
 - Eliminate development cost borne applicants where consent is triggered by the operative TDP mapping and associated provisions that are incorrect,
 - Reduce Council workload in processing unnecessary consents trigger by incorrect mapping,
 - Where subdivision is involved, the operative TDP adequately manages risks from Fault Hazards; and
 - The Building Act sufficiently manages risk from Natural Hazard where resource consent is not triggered or does not involve subdivision.
- 6.5 Our recommended decisions, except as outlined in this report where they vary from the 42a recommendations, in terms of the acceptance or rejection of submissions are shown in **Appendix 1**.
- 6.6 **Appendix 2** contains the amended provisions as notified and accepted by the Panel.

DATED THIS 12th DAY OF March 2024



DJ McMahon
Chair



EA Burge
Independent Commissioner



YJ Westerman – Councillor

⁶⁷ Proposed National Policy Statement for Natural Hazard Decision-making, Sept 2023

Appendix 1 – 42a Table of Recommendations on Submissions

Submissi on ID	Submitter Name	Provision	Position	Decision Sought	Officers Recommen dation	Section of the Report	Further Sub ID	Further Submitter	Position	Further Sub Reason	Officers Recommended Response
OS16.1	Toka Tū Ake EQC	4-Plan Change 41 - Removal of Fault lines	Oppose	Toka Tu Ake EQC request that the Taupo District Council retain regulatory fault overlay maps in the district plan, as well as all rules in the district plan that pertain to the fault hazard overlay.	Not Accept	4.2	FS220.16	Federated Farmers of New Zealand	Support	The inclusion of fault lines in the District Plan provides a level of certainty to landowners and potential landowners.	Not Accept
							FS211.14	Mercury NZ Limited	Oppose	Mercury supports the Council approach of relying on the Building Act as the primary mechanism for ensuring that the risks posed to buildings from potential fault lines are mitigated. Mercury opposes the re-introduction of the discretionary activity rule (4e.10) without having the opportunity to review the fault line overlay on the planning maps from which the 20m setback would be measured.	Accept
OS16.2	Toka Tū Ake EQC	4-Plan Change 41 - Removal of Fault lines	Oppose	Toka Tu Ake EQC request that the Taupo District Council retain regulatory fault overlay maps in the district plan, as well as all rules in the district plan that pertain to the fault hazard overlay. We request that Taupo District Council follow the recommendations of GNS Science in Litchfield et al’s (2020) report Active fault hazards in the Taupo district, and replace the fault lines in the operative Taupo District Plan with the new and more accurate fault lines mapped in said report.	Not Accept	4.2	FS212.2	Waikato Regional Council	Support in Part	WRC agrees with the submitter that there must be provisions in the plan managing fault lines and that applicants should rely on more updated information such as the GNS reports. However, we consider that retaining the current information or updating the district plan with the more accurate mapping is not the best approach. We consider that there should be regulations in the proposed plan managing fault lines and that in terms of mapped fault lines, applicants should rely on the most updated information provided by GNS. To this effect, we consider it more efficient to direct applicants to the most updated GNS report or on-site investigation instead of having a rigid overlay in the district plan. This will ensure that applicant will always have access to the most updated information. District plans have a 10-year lifespan and there is a risk the fault lines information will become redundant and then conflict with more updated information.	Accept in Part
							FS220.17	Federated Farmers of New Zealand	Support	The inclusion of fault lines in the District Plan provides a level of certainty to landowners and potential landowners.	Not Accept
OS17.6	Jennifer Molloy-Hargraves	4-Plan Change 41 - Removal of Fault lines	Support	Retain Plan Change 41 as notified.	Accept	4.1.1					
OS24.2	Classic Builders Lakes District	4-Plan Change 41 - Removal of Fault lines	Support	Delete the fault lines from the plan as notified.	Accept	4.1.1					
OS29.24	Waikato Regional Council	4-Plan Change 41 - Removal of Fault lines	Seek amend ment	Give regard to Change 1 to the WRPS as a ‘proposed policy statement’ in the proposed plan changes.	Accept	4.3					
OS29.30	Waikato Regional Council	4-Plan Change 41 - Removal of Fault lines	Seek amend ment	Update PPPC38-43 to the new plan format provided with the National Planning Standards 2019	Not Accept	4.3					

Submission ID	Submitter Name	Provision	Position	Decision Sought	Officers Recommendation	Section of the Report	Further Sub ID	Further Submitter	Position	Further Sub Reason	Officers Recommended Response
OS31.1	Alistair Wilton	4-Plan Change 41 - Removal of Fault lines	Support	Support the removal of the faultlines, however seeks that site specific geotechnical reports be accepted over and above the GNS data.	Accept in Part	4.1.1					
OS61.9	Alistair Wilton	4-Plan Change 41 - Removal of Fault lines 4.3	Support	Retain.	Accept	4.1.1					
OS69.1	Lyndon Haugh	4-Plan Change 41 - Removal of Fault lines	Seek amendment	Plan change 41 wording specifically encompasses not just the August 2020 GNS report but also any changes to the report conclusions arising from improved information from the recent LIDAR Survey. Plan change 41 also includes a requirement for a regular (every 5? Years) review by GNS of the current knowledge of faultlines in the District so that any Resource Consents that need to consider faultlines are reviewed with information as current as possible at the time of Consent.	Accept in Part	4.2					
OS79.7	Cheal Consultants	4-Plan Change 41 - Removal of Fault lines 4.2- Plan Change Provisions	Seek amendment	At a minimum there should still be reference in ‘other information’ to fault lines. An alternative could be a permitted activity rule to build near or on fault lines identified with the provision of a supportive geotechnical report. This rule would really reinforce the building act requirements and push everyone to the geotechnical report early	Accept in Part	4.2	FS220.18	Federated Farmers of New Zealand	Support	The inclusion of fault lines in the District Plan provides a level of certainty to landowners and potential landowners.	Not accept
OS91.8	Federated Farmers of New Zealand – Rotorua / Taupō	4-Plan Change 41 - Removal of Fault lines	Seek amendment	(a) the retention of a reference in the district plan that tells plan users where they can access the up-to-date data on fault lines; and b) that the Council provides access to the up-to-date fault line data from the GNZ report to district plan users; and (c) any consequential amendments required as a result of the relief sought.	Accept in Part	4.2					
OS93.22	Contact Energy Limited	4-Plan Change 41 - Removal	Support	Contact seeks that Taupo District Council adopts PC41 as notified.	Accept	4.1.1	FS209.153	Manawa Energy	Support	Manawa Energy supports this submission	Accept

Submissi on ID	Submitter Name	Provision	Position	Decision Sought	Officers Recommen dation	Section of the Report	Further Sub ID	Further Submitter	Position	Further Sub Reason	Officers Recommended Response
		of Fault lines					FS211.16	Mercury NZ Limited	Support	Mercury supports the Council approach of relying on the Building Act as the primary mechanism for ensuring that the risks posed to buildings from potential fault lines are mitigated. Mercury agrees with Contact Energy relief that PC41 be adopted as notified.	Accept
OS115.18	Te Kotahitanga o Ngāti Tuwharetoa	4-Plan Change 41 - Removal of Fault lines	Seek amend ment	Amend PC41 recognise and provide for the vision, objectives, values, and desired outcomes in Te Kaupapa Kaitiaki.	Accept in Part	4.4					
OS115.24	Te Kotahitanga o Ngāti Tuwharetoa	4-Plan Change 41 - Removal of Fault lines	Seek amend ment	Amend Plan Change 41 to respect and reflect a genuine understanding and commitment to the principles of Te Tiriti/The Treaty of Waitangi.	Accept in Part	4.4					
OS115.30	Te Kotahitanga o Ngāti Tuwharetoa	4-Plan Change 41 - Removal of Fault lines	Seek amend ment	Amend Plan Change 41 to reflect the new wording of the NBE and SP Acts once these are ratified by the appropriate regional authorities.	Not Accept	4.3					

Appendix 2 – Plan Change 41 Provisions

The PC41 is seeking the following amendment to the Proposed Taupō District Plan as follows (amendment shown in ~~red strikethrough~~):

Section 3q Mapara Valley Structure Plan Area	
3q.2.3	Policies vii. Development should not be undertaken within 20 metres of an identified fault line.
4e District Wide Rules	
Section Index 4e.10	Fault Line Hazard Area
4e.10.1	Any structure excluding network utility lines, cables, and pipelines, (including support structures), within 20 metres of a fault line identified on the Planning Maps, is a discretionary activity. ASSESSMENT CRITERIA a. Degree to which building, structural or design work to be undertaken can avoid or mitigate the effects of the natural hazard. b. The nature of the activity, its intended uses including whether the use is temporary or permanent and the degree to which other people are put at risk as a result of the activity. c. The type and nature of ground rupture or ground deformation likely to occur as a result of movement along the fault line. d. The distance of any proposed structure from the fault line.
Planning Maps	
Legend	Delete from Legend: Fault Lines (District Plan)
All planning maps	Remove the geographical information systems layer that depicts fault lines on the district plan maps.